

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Implementation of Section 25

("DBS") services Sections 312(a)(7) and 315, rules that were developed largely in the context of the broadcast medium. The application of these rules to DBS has the potential to create anomalous results that disadvantage DBS distributors, programmers, and consumers. To avoid this result, the Commission should interpret Section 25 in a way that accounts for the unique characteristics of DBS, and makes practical sense for consumers, DBS operators, and programmers.

Specifically, Time Warner recommends that the Commission:

- Recognize that the definition of "a provider of DBS service" does not include C-band satellite transmissions;
- Recognize that a DBS provider need not satisfy its Sections 312(a)(7) and 315 obligations on a channel-by-channel basis; and
- Adopt rules clarifying that DBS providers have no authority to require a particular programmer: 1) to provide reasonable access to political candidates; or 2) to permit a political candidate to appear on its program service in order to satisfy the DBS provider's equal opportunity obligation.

## **II. THE DEFINITION OF A "PROVIDER OF DBS SERVICE" DOES NOT INCLUDE C-BAND SATELLITE TRANSMISSIONS**

The Commission has recognized that "Congress apparently intended to exclude C-band DBS operations from the obligations to be imposed by Section 25 . . . [because the] definition of affected DBS programming providers set forth in subsection (b)(5) is expressly limited to entities operating pursuant to Parts 25 or 100 of our Rules in the Ku-band."<sup>2</sup> Thus, the Commission

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<sup>2</sup> Notice at 1590.

tentatively concluded that the scope of Section 25 is limited to "DBS services provided in the Ku-band."<sup>3</sup> Time Warner agrees that satellite transmissions of programming to cable headends and to home satellite dishes occurring within the C-band are outside the scope of Section 25 or any implementing regulations that are adopted by the Commission.<sup>4</sup>

**III. SECTION 25 DOES NOT REQUIRE THAT A DBS OPERATOR'S SECTION 312(a)(7) AND 315 OBLIGATIONS BE SATISFIED ON A CHANNEL-BY-CHANNEL BASIS**

The Commission should not require DBS providers to satisfy their Sections 312(a)(7) and 315 obligations on a channel-by-channel basis. To do so would have the effect of imposing the rules on individual programmers, since each programmer ultimately would confront the possibility of making available time from its service for political advertisements. Such an interpretation is clearly contrary to Congressional intent. Had Congress wanted that result, it easily could have made the rules apply on a channel-by-channel basis, or, in fact, simply applied Sections 312(a)(7) and 315 directly to program services. Instead, it imposed the obligation only on DBS providers.

Moreover, imposing a channel-by-channel requirement would indirectly interfere with programmers' editorial discretion. An

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<sup>3</sup> Id.

<sup>4</sup> This result is consistent with the Commission's pre-existing definition of DBS as an entity operating in the Ku-band under Parts 25 or 100. See, e.g., Rate Regulation, Report and Order and Further Notice of Proposed Rule Making, MM Docket 92-266, FCC 93-177, note 98 (rel. May 3, 1993).

interpretation of Section 25 which raises such serious constitutional concerns should be avoided where, as here, there is no indication that Congress intended such a result.

The Commission also should recognize that Section 25 neither requires nor permits a DBS provider to mandate that any particular programmer provide reasonable access to its service by a political candidate. As noted, Section 25 of the Act imposes no Section 312(a)(7) obligation on program services. Time Warner would strenuously object to any interpretation of Section 25 that would empower a DBS provider to dictate that HBO must include political advertisements on its program services. HBO has invested enormous capital and other resources over the last 20 years in building a brand identity for its HBO and Cinemax services. A central facet of that identity is that the services are commercial free. Thus, imposition of a reasonable access requirement would fundamentally alter the nature of the service.

Similarly, the Commission must make clear that Section 25 does not permit a DBS operator to unilaterally require a particular program service to provide an equal opportunity under Section 315. Time Warner would strenuously object to any interpretation of Section 315 which allowed a DBS provider to mandate that an equal opportunity obligation caused by an appearance of a political candidate on another program service should be satisfied by permitting response time on HBO or Cinemax.

#### IV. CONCLUSION

Time Warner respectfully recommends that the Commission adopt regulations to implement Section 25 of the Act consistent with the proposals contained herein.

Respectfully submitted,

**TIME WARNER ENTERTAINMENT  
COMPANY, L.P.**

  
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